

Senior Residence Special Permit – 08-02
The Residences at Quail Ridge
Supplemental Decision – October 14, 2008



Planning Board

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SUPPLEMENTAL DECISION

08-02

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RECORD OF PROCEEDINGS AS TO PROPOSED MODIFICATION TO ORIGINAL DECISION - RELIEF DENIED FOR WANT OF SUPER-MAJORITY VOTE

This is a Supplemental Decision of the Acton Planning Board (hereinafter the Board) on the supplemental application by Steven R. Graham (Applicant's attorney) filed on behalf of Quail Ridge Country Club, LLC (herein the Applicant) seeking action by the Board to supplement its decision for a Senior Residence special permit 08-02, dated February 12, 2008, for property in Acton, Massachusetts, owned by the Applicant (hereinafter the Original Decision). The property is located at 354B Great Road, Skyline Drive, Acton, Massachusetts and shown on the 2007 Acton Town Atlas as D-4/4, D-4/9 and C-4/29 (hereinafter the Site). The Original Decision was appealed to Middlesex Superior Court by the Applicant (Civil Action No. 08-0874) and by the abutting Acorn Park Condominium (Civil Action No. 08-908), and both appeals were remanded to the Board by joint motions allowed on June 3, 2008, for further proceedings as to whether and what secondary means of access will be allowed or required to the Project Site.

The application to supplement the Original Decision as to secondary access was filed in the Acton Planning Department on May 1, 2008, pursuant to Section 9B of the Acton Zoning Bylaw (hereinafter the Bylaw) and the Rules and Regulations Senior Residence special permits (hereinafter the Rules). The Board held a duly noticed public hearing on the application and the remanded proceedings. It was opened on June 10, 2008. Due to pending Board member resignations and the recency of the remand order, the hearing was continued without presentation or discussion to July 8, 2008 in order to hear the matter with a fully constituted Board after soon anticipated new appointments. The hearing then began in earnest on July 8, 2008, and was further continued on July 22, 2008 and September 9, 2008, then closed.

Presenting for the Applicant were Attorney Steven R. Graham and Brian Beisel P.E. of Conley Associates, traffic consultant for the Applicant. The Board also heard comments from numerous abutters and testimony from Robert Woodland of Woodland Design Group, Inc., traffic consultant for the Acorn Park Condominium Associations. Further, the Board engaged Brian P. Duggan and Keith E. Hoyle of Municipal Resources, Inc. to advise the Board on fire and emergency access and services matters, and Sam Offei-Addo P.E. of the BSC Group, to advise the Board on matters of traffic management and circulation, and on street/intersection capacity and safety.

Board members Gregory E. Niemyski (Chairman), Bruce Reichlen (Vice Chairman), Ryan J. Bettez, Roland A. Bourdon, III, Ruth M. Martin, and Alan R. Mertz were present throughout the hearing. The chairman designated Leigh Davis Honn to sit on the Board to act on this application pursuant to section 10.3.9 of the Bylaw. Ms. Davis Honn was present throughout the hearing except for the July 8, 2008 session. She certified pursuant to Ch. 79 of the Acts of 2006 that she has viewed and examined a video tape of the missed session. The minutes of the hearing and submissions on which this decision is based upon may be referred to in the Planning Department or the Town Clerk's office at the Acton Town Hall.

1 SCOPE AND EFFECT OF SUPPLEMENTAL DECISION

The Original Decision granted a special permit for the proposed Residences at Quail Ridge (hereinafter RQR) with conditions and required Plan modifications. In it the Board approved two fully open secondary accesses to the proposed development via public streets in the adjacent Acorn Park subdivision in addition to Skyline Drive, the primary access. The secondary accesses were at Hazelnut Street and at Palmer Lane. Neighbors in Acorn Park were concerned about potential deterioration of traffic conditions and safety on the streets in the Acorn Park subdivision resulting from the proposed development. The Original Decision, therefore, required the Applicant to investigate the feasibility, safety, reliability, and effects of other secondary access alternatives, such as gated emergency accesses and other secondary access routes, and to work with the Board through a supplemental application, hearing, and decision process to review these alternatives and to change, or not change, the secondary access configuration as the Board may then deem necessary and appropriate after this further investigation.

This Supplemental Decision only addresses the matter of secondary access to the Development. Except as supplemented herein, the Original Decision shall remain in full force and effect.

For purposes of M.G.L. Chapter 40A, Section 9 (lapse time of special permit), the Town Clerk filing date of this Supplemental Decision, not the date of the Original Decision, shall be considered as the date when this special permit has been issued.

2 EXHIBITS

Exhibits on which this Supplemental Decision is based on:

- 2.1 A "Supplemental Application for a Senior Residence Special Permit - The Residences at Quail Ridge", dated May 1, 2008, prepared by Steven R. Graham on behalf of Quail Ridge Country Club LLC, including:
 - Application form.
 - Exhibit A – footnotes and clarifications regarding Great Road Condominium.
 - Exhibit B – summary, details, correspondence, and legal evaluation related to potential secondary access through Great Road Condominium property.
 - Abutters list.
- 2.2 Interdepartmental communication received from:
 - Acton Tree Warden & Municipal Properties Dir., dated 5/29/08.
 - Acton Treasurer's Office, dated 5/6/08.
 - Acton Historical Commission, dated 5/15/08.
- 2.3 Peer reviews and Acorn Park access evaluations.
 - Memorandum from BSC Group (Peer Review of Traffic Impact Assessment, Residences at Quail Ridge, Acton, MA), dated 9/3/08, prepared for the Board by Sam Offei-Addo, P.E. regarding peer review of Applicant's traffic impact report and access considerations.
 - Slide presentation by Mr. Offei-Addo (BSC Group) given on 9/9/08.
 - RFQ for Transportation Engineering/Traffic Management (peer review/risk assessment) issued by the Acton Planning Department on 7/29/08.
 - Residences at Quail Ridge - Special Permit Fire Services Analysis, September 2008, from Municipal Resource, Inc. prepared by Brian P. Duggan and Keith E. Hoyle.
 - Slide presentation by Municipal Resources, Inc. given on 9/9/08.
 - RFQ for Fire Service Consultant Review Services (risk analysis/assessment), issued by the Acton Planning Department on 7/28/09.
- 2.4 Correspondence received from:
 - Carol Holley, 5/31/08.
 - Alan Cathcart, Water/Sewer Superintendent, Concord Public Works, 7/22/08.
 - Ian Moncrieff, 8/3/08.
 - Roger Schneider, 9/2/08.
 - James Russell, 9/6/08 (with attachment), 7/18/08, and 5/9/08.
 - Jim Schmidt, 9/6/08.
 - Bob Lutz, 9/7/08.
 - Robert Hurdle, 9/8/08.
 - Kevin Bolen, 9/9/08.
 - Anu Krishnan, 9/9/08 and 6/18/08.
 - John Nitzke, 9/9/08.
 - Jeff Poulton, 9/9/08.
- 2.5 Other:
 - Special Permit Decision 08-02, dated February 12, 2008 (the Original Decision).

- All exhibits referred to in the Original Decision.
- Allowed Joint Motions to Remand in the Middlesex Superior Court appeals by the Applicant (Civil Action No. 08-0874) and by the abutting Acorn Park Condominium (Civil Action No. 08-908).
- Deeds, plans, and prior Board decision relative to Acorn Park.
- "Traffic Impact Assessment" by Woodland Design Group, Inc. (Robert Woodland, P.E.) prepared for Acorn Park Condominium Association, dated 7/7/08 (Woodland on 7/22/08 also gave a slide presentation on this report supplemented with a demo of computer simulated traffic conditions on Great Road and its intersections with Acorn Park Drive and Skyline Drive).
- Slide presentation by Board member Bruce Reichlen given on 7/22/08.
- Slide presentation by Acorn Park Association given on 7/22/08.
- Certificate of the Secretary of Energy and Environmental Affairs on the Supplemental Environmental Impact Report (EOEA Number 12503), dated 8/29/08.

3 EVIDENCE PRESENTED

The evidence presented to the Board at the public hearing included, without limitation, the following information:

- 3.1 The Applicant contacted the Great Road Condominium Board of Directors or Trustees in a good faith effort to secure a 2nd access through the Great Road Condominium property, and the Applicant evaluated the legal, including zoning aspects of such an access. The Board of the Great Road Condominium was not receptive to providing access, and the Applicant found zoning barriers to such an access that were not clearly apparent earlier.
- 3.2 The Board has heard expert testimony on matters of fire/emergency access and operations as applied to the proposed development; emergency access gate designs, and operational, maintenance, and enforcement requirements for them, and possible problems that might occur with them.
- 3.3 The Board has heard expert testimony on traffic impacts at affected intersection with Great Road and in the Acorn Park streets; travel distances, and projected traffic flows and distributions; street and intersection capacity; and design, function and safety of streets in the Acorn Park streets.
- 3.4 The streets in Acorn Park are designed and do function as safe residential streets. By way of their width, layout, curvatures, and general configuration they prevent unsafe vehicle speeds. There are sidewalks. Occasional vehicles parked on the street function like traffic calming devices. Slow vehicle speeds allow for accident avoidance.
- 3.5 The streets in Acorn Park have sufficient built-in volume capacity to safely accommodate traffic from RQR. While any additional traffic can increase the possibility of accidents, the risk here remains within generally acceptable limits.
- 3.6 The Great Road intersections of Acorn Park Drive and Skyline Drive are both in failure mode (Level of Service F) for side street traffic. They will remain so after the development of RQR. Traffic signals are not warranted for either intersection under built conditions. Side street peak hour queue lengths will increase with increased side street traffic. Measurements under current conditions and predictions for built conditions under various access configurations indicate that peak hour queue length will not exceed those experienced throughout Acton at similar intersections.
- 3.7 The Applicant proposes that the streets inside the proposed development remain private.

- 3.8 The Acton Finance Director has advised that the property tax payments for the RQR development Site are in arrears.

4 BOARD ACTION

Based upon its review of the testimony and exhibits and the record of the proceedings the Board finds and concludes that: the Applicant has made a diligent and good faith effort and negotiated in good faith with the Great Road Condominium Board of Directors or Trustees in an effort to secure a 2nd access through the Great Road Condominium property and has evaluated the legal, including zoning aspects of such an access. The Board of the Great Road Condominium was not receptive to providing access, and the Applicant found zoning barriers to such an access that were not clearly apparent earlier. Therefore, secondary access for RQR to Great Road through the Great Road Condominium property is not feasible.

The Board members reviewed and discussed a proposed supplemental decision which would if adopted modify the Original Decision to require full street access to and from RQR at Hazelnut Street but a gated emergency access (rather than full street access) to and from RQR at Palmer Lane. It was noted that a 2/3 majority would be required to issue such a supplemental decision. A motion to approve the supplemental decision on this basis lost 3 in favor to 4 opposed.

Recognizing that, if the Board could not reach a 2/3 majority vote on an alternative access solution, the default access alternative would be two full street accesses between RQR and Acorn Park public ways as approved in the Original Decision, the Board then entertained a motion to modify the Original Decision to require gated emergency access at both Hazelnut Street and Palmer Lane. However, on a vote of 4 in favor to 3 opposed, this motion failed to carry by a super-majority.

The Board then entertained a motion to modify the Original Decision to require that Palmer Lane be closed with a gated emergency access to RQR and to have Hazelnut Street as a one-way access into RQR. However, on a vote of 4 in favor to 3 opposed, this motion also failed to carry by a super-majority.

A motion to reconsider the original motion set forth above then lost by a vote of 3 in favor to 4 opposed.

The Chairman noted that the task on remand after the supplemental hearing process is to issue a supplemental decision to the Original Decision which approved two open street accesses between RQR and Acorn Park (Hazelnut Street and Palmer Lane). Mr. Niemyski asked for any other motion. There being none, Mr. Niemyski declared that the Board failed to reach a supermajority vote on an alternative configuration of secondary access and that therefore the Original Decision stands unchanged on this issue.

The Board issues this Supplemental Decision to memorialize the record of its proceedings, to confirm that secondary access for RQR to Great Road through the Great Road Condominium property is not feasible, to acknowledge that the requirements of sections 3.2.2 and 3.2.3 including their subsections have been fulfilled, and to confirm that the Original Decision otherwise remains unchanged.

5 APPEALS

Appeals, if any, shall be made pursuant to MGL, Ch. 40A, S. 17 and shall be filed within 20 days after the date of filing this decision with the Town Clerk.

The Town of Acton Planning Board

Gregory E. Niemyski, Chairman

Bruce Reichlen, Vice Chairman

Ryan J. Bettez

Roland A. Bourdon, III

Ruth M. Martin

Alan R. Mertz

Leigh Davis Honn, Associate

(or)

Signed on behalf of the Acton Planning Board

Roland Bartl, AICP, Planning Director
for the Town of Acton Planning Board

This is to certify that the 20-day appeal period on this decision has passed and there have been no appeals made to this office.

Eva Bowen, Town Clerk

Date

Copies furnished:

Applicant -
certified mail #
Municipal Properties Director
Town Manager
Concord Public Works
Assistant Assessor

Building Commissioner
Health Director
Town Clerk
Fire Chief
Owner
MAGIC

Zoning Enforcement Officer
Town Engineer
Conservation Administrator
Police Chief
Historical Commission

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